



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	15
VAC Chapter Number:	20
Regulation Title:	Virginia Asbestos Licensing Regulations
Action Title:	Proposed
Date:	December 4, 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board was created to regulate through testing and evaluation, those individuals who work in the asbestos field.

The amended regulation updates the existing regulation by following current federal regulations. The amended regulation was reorganized to go from the general to the specific to make the regulations more clearly understandable.

Non-friable roofing, flooring and siding materials have been deregulated since House Bill 951 became effective July 1996 and so have been deleted.

Experience requirements for asbestos inspectors, management planners, and project designers now include five example reports for a Bachelor of Science degree, ten example reports for a Associate of Science degree, and fifteen example reports for a High School Diploma to meet entry requirements.

Asbestos analytical laboratories providing Phase Contrast Microscopy (PCM) analysis may now use the Asbestos Analyst Registry (AAR) to meet their accreditation requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The proposed regulations are based on the EPA model accreditation plan (MAP). The MAP establishes the minimum requirements for licensure of asbestos professionals. The proposed regulations are no more stringent than the MAP. Project monitor's licensure is suggested by the MAP and is required by Virginia State Statute.

To date, two federal agencies have been principally responsible for generating regulations for asbestos control. These two agencies are the U.S. Occupational Safety and Health Administration (OSHA) and U.S. Environmental Protection Agency (EPA).

A summary of OSHA and EPA regulations follows. Specifically covered are the OSHA Asbestos Standards; the EPA Worker Protection Rule; The National Emission Standards for Hazardous Air Pollutants (NESHAP); the Asbestos Hazard Emergency Response Act (AHERA); and the EPA Model Accreditation Plan (MAP).

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

The Occupational Safety and Health Administration has established these sets of regulations that address asbestos exposure:

- 29 CFR 1910.1001 - General Industry
- 29 CFR 1926.1101 - Construction Industry
- 29 CFR 1915.1001 - Shipyard Employment
- 29 CFR 1910.134 - Use of Respirators (General)

The construction industry standard (29 CFR 1926.1101) covers employees engaged in demolition and construction, and the following related activities likely to involve asbestos exposure:

- Removal;
- Encapsulation;
- Alteration;
- Repair;
- Maintenance;
- Insulation;
- Spill/emergency clean-up;
- Transportation;
- Disposal;
- Storage of Asbestos Containing Material.

The web site address for locating the text of 29 CFR 1926.1101 is: http://www.osha-slc.gov/OshStd_data/1926.1101.html

EPA WORKER PROTECTION RULE

This regulation extends the OSHA standards to state and local employees who perform asbestos work and who are not covered by the OSHA Asbestos Standards, or by a state OSHA plan. The Rule currently parallels 1986 OSHA requirements and requires medical examinations, air monitoring and reporting, protective equipment, work practices and recordkeeping.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)

EPA's rules concerning the application, removal, and disposal of asbestos-containing materials were issued under National Emission Standards For Hazardous Air Pollutants (NESHAP).

Bans on Asbestos Containing Materials

Three bans on asbestos-containing material were set forth by the NESHAP regulations. These bans occurred in the three years as indicated below:

- 1973 - Spray-applied insulating materials
- 1976 - Pre-molded insulation, if friable
- 1978 - Spray-applied decorative material

Notification

Specific notification to a regional or state NESHAP Coordinator is required before a building is demolished or renovated. This written notification must be delivered by U.S. Postal Service, commercial delivery service, or hand delivery.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA)

Final AHERA regulations became effective 14 December 1987. Included in this Act were provisions directing the EPA to establish rules and regulations addressing asbestos-containing materials (ACM) in schools. Specifically, EPA was directed to address the issues of: (1) identifying, (2) evaluating, and (3) controlling ACM in schools.

MODEL ACCREDITATION PLAN (MAP)

On February 3, 1994, the EPA Asbestos Model Accreditation Plan (MAP) was published in the Federal Register as 40 CFR Part 763 Appendix C to Subpart E. The MAP is the driving force behind the licensure of asbestos professionals and set forth the guidelines for the States' asbestos programs. The MAP for States has eight components:

- Definitions
- Initial Training
- Examinations
- Continuing Education
- Qualifications
- Recordkeeping Requirements for Training Providers
- Deaccreditation
- Reciprocity

EPA regulations web site addresses can be located at: <http://www.epa.gov/docs/epachfr40/chapt-1.info/subch-r/40p0763.pdf>

CODE OF VIRGINIA

The Board's authority to promulgate the proposed regulations is contained in Section 54.1-201 and Section 54.1-501 of the Code of Virginia.

Section 54.1-501 of the *Code of Virginia* mandates that the Board for Asbestos and Lead implement Chapter 5 of Title 54.1 of the *Code of Virginia*, by promulgating regulations that include requirements to:

Carry out Section 54.1-501 of the *Code of Virginia* in compliance with the Administrative Process Act to include but not limited to the prescription of fees, procedures, and qualifications for the issuance and renewal and govern conflicts of interest of asbestos licenses;

Approve the criteria for accredited asbestos training programs, training managers and principle instructors;

Approve accredited asbestos training programs, examinations and the grading system for testing applicants for asbestos licensure;

Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;

Promulgate regulations governing the functions and duties of project monitors on asbestos projects, and training requirements for project monitors.

The proposed regulations implement each of the above in a manner believed to be the least burdensome on the regulated industry while providing protection to the public against incompetent and unqualified persons working as asbestos professionals.

(For Code text, see: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>).

The imperative form of the verb "shall" is used in the statute making the rulemaking provisions mandatory rather than discretionary.

By memorandum dated September 11, 2000, the Office of the Attorney General stated that the agency has the authority to promulgate the proposed regulations under the authority granted the Board under Section 54.1-201(5) of the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

These amended Virginia regulations are essential to continuing the implementation of federal mandates and to address a clear and imminent threat to the health, safety and welfare of the public. Various sources have estimated that upwards of 12,000 workers will die of asbestos-related diseases every year. Most of these workers will become ill ten to forty years after they started working with or around asbestos.

Asbestos is a naturally occurring mineral which breaks up into microscopic fibers. The fibers accumulate in the lungs and can lead to various diseases. After ten to forty years from the date of exposure asbestos can cause asbestosis, lung cancer, mesothelioma, and other cancers. There is no dose response to asbestos, so it is possible to die from mesothelioma after being exposed to a single fiber of asbestos.

Training is vital so that personnel in the asbestos field do not run the risk of exposing themselves, subsequent occupants and occupants in adjacent areas to a known carcinogen.

By requiring training and licensure of personnel in the asbestos abatement field, the amended regulations will help to protect the health, safety, and welfare of the public.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

18 VAC 15-20-10 has been amended to add the meanings of acronyms used throughout the regulation document.

18 VAC 15-20-20 has been amended to add, delete or modify the definitions of terms used throughout the regulation document.

18 VAC 15-20-21 has been added to make clear that the Board may waive regulation requirements only when no harm to the public will result and to explain that the burden of proof which demonstrates continued public protection rests with the party requesting the waiver.

18 VAC 15-20-30 has been revised for clarity and ease of use. Much of the revision reflects the relocation of language or requirements from other sections of the existing regulations. The result is a section that allows one to quickly determine the general requirements to obtain and renew licensure.

18 VAC 15-20-40 has been amended to change the name of the form required to document qualifying experience and to allow a letter from an employer to be substituted for the experience verification form.

18 VAC 15-20-50 has been amended to delete references to the deregulated RFS disciplines and to enhance clarity.

18 VAC 15-20-60 has been amended to provide more specific information concerning license renewal, to change the date that individual licensees must complete refresher training and to add a renewal requirement for accredited asbestos training programs.

18 VAC 15-20-70 has been amended to reflect the renewal requirement for accredited asbestos training programs, to provide an additional refresher training option for project monitors, and to limit to one the number of times a single training certificate may be used to renew an individual license. Other revisions to the language have been made for clarity.

18 VAC 15-20-80 has been amended to extend the requirement to report name and address changes to accredited asbestos training programs.

18 VAC 15-20-90 has been amended to move the general requirements to qualify for a worker license to 18 VAC 15-20-30.

18 VAC 15-20-100 requires applications be accompanied by the appropriate fee and has been repealed in its entirety. The language now appears in 18 VAC 15-20-50.

18 VAC 15-20-101 is a new section containing the specific entry requirements for licensure as an asbestos supervisor in 18 VAC 15-20-30.

18 VAC 15-20-110 has been amended to specifically require an application and fee, and to state more specifically which occupational or professional licenses are required to qualify for an asbestos contractor license.

18 VAC 15-20-120, 18 VAC 15-20-130 and 18 VAC 15-20-140 have been repealed in their entirety. The standards established in the repealed sections have been moved to 18 VAC 15-20-451, 18 VAC 15-20-452 and 18 VAC 15-20-453.

18 VAC 15-20-150 has been amended to empower the Board to deny the asbestos contractor license application of any firm whose owners, officers or directors have a financial interest in an asbestos contractor whose asbestos license has been revoked, suspended or denied renewal.

18 VAC 15-20-160 prohibits the transfer of an asbestos contractor license and has been repealed in its entirety. Its substance now appears as 18 VAC 15-20-454.

18 VAC 15-20-170, 18 VAC 15-20-180, 18 VAC 15-20-190, 18 VAC 15-20-200, 18 VAC 15-20-210, 18 VAC 15-20-220, 18 VAC 15-20-230 and 18 VAC 15-20-240 have been repealed in their entirety to implement the provisions of House Bill 951, passed by the 1996 Session of the Virginia General Assembly, which deregulated asbestos roofing, flooring and siding activities.

18 VAC 15-20-250 establishes the qualifications for inspections and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-251.

18 VAC 15-20-251 is a new section drawn from 18 VAC 15-20-250 as a part of the reorganization of the sections.

18 VAC 15-20-260 describes the management plan to be prepared by management planners, and has been repealed in its entirety. Its substance has been made a part of 18 VAC 15-20-459 and 18 VAC 15-20-459.1.

18 VAC 15-20-270 establishes entry standards for management planners and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-271. Obsolete and ineffective language has been deleted and language has been added to allow one to qualify for a license after having completed a specific number of management plans.

18 VAC 15-20-271 is a new section drawn from 18 VAC 15-20-270 as a part of the reorganization of the sections and continues the substance of language deleted from 18 VAC 15-20-270.

18 VAC 15-20-280 sets the duties and functions of project designers and has been repealed in its entirety. Its substance now appears in 18 VAC 15-20-457.

18 VAC 15-20-290 establishes the entry standards for project designers, has been amended to reorganize the existing regulation provisions, and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-291.

18 VAC 15-20-291 is a new section drawn from 18 VAC 15-20-290 as a part of the reorganization of the sections and continues the substance of 18 VAC 15-20-290.

18 VAC 15-20-300 establishes the duties and functions of project monitors, has been repealed in its entirety and moved to 18 VAC 15-20-455 under a new regulation part created for project monitor standards of conduct and practice.

18 VAC 15-20-310 specifies the types of abatement projects that must have a project monitor. The section has been repealed in its entirety. The regulation required project monitors on specific projects but stopped short of making any specific party responsible to assure the presence of project monitors. As a result, the regulation is unenforceable.

18 VAC 15-20-320 exempts residential buildings from the project monitor requirements and has been repealed in its entirety for substantially the same reasons as cited above for 18 VAC 15-20-310.

18 VAC 15-20-330 establishes the license qualifications for project monitors and has been revised and reorganized for clarity. The language establishing qualifying experience in subsection E has been rephrased and moved to subsection B. Subsections C and D have been rephrased, deleted in their entirety and moved to subsections A and B of 18 VAC 15-20-332, project monitor training requirements. The substance of the first sentence of subsection F has been moved to 18 VAC 15-20-456 D, project monitor responsibilities, and the substance of the remainder of the subsection has been revised and moved to 18 VAC 15-20-331, qualifying experience.

18 VAC 15-20-331 and 18 VAC 15-20-332 are new sections and have been addressed under 18 VAC 15-20-330 above.

18 VAC 15-20-340 establishes the general standards of performance for asbestos analytical laboratories, has been repealed and moved to 18 VAC 15-20-459.2 under Part XVII establishing standards of practice and conduct for asbestos analytical laboratories.

18 VAC 15-20-350 establishes the license application requirements for asbestos analytical laboratories and has been repealed in its entirety. The substance has been moved to 18 VAC 15-20-40.

18 VAC 15-20-360 establishes the licensing qualifications for asbestos analytical laboratories and has been rephrased for clarity.

18 VAC 15-20-370 establishes the requirement to submit a completed application along with a fee in order to apply for an asbestos analytical laboratory license and is repealed in its entirety. The substance has been moved to 18 VAC 15-20-40.

18 VAC 15-20-380 and 18 VAC 15-20-390 deal with laboratory change of status and license certificate, have been repealed in their entirety and their substance moved to 18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 as a part of the regulation reorganization.

18 VAC 15-20-400 establishes the responsibility of all licensees to the public and establishes performance standards in specific situations.

18 VAC 15-20-410 establishes performance standards for public statements made by regulants and is unchanged from the current regulation.

18 VAC 15-20-420 establishes solicitation of work standards for regulants and is unchanged from the current regulation.

18 VAC 15-20-430 establishes professional responsibility standards for regulants and is unchanged from the current regulation.

18 VAC 15-20-440 establishes a requirement for regulants to maintain good standing in other jurisdictions in which they may be regulated. There is no change from the current regulation.

18 VAC 15-20-450 enumerates the grounds for disciplinary action that may be taken by the Board against regulants who fail to comply with the provisions of the regulations. The language has been amended for clarity and is substantially unchanged from the current regulation.

18 VAC 15-20-451 is a new section created to continue the asbestos contractor responsibilities that were repealed as 18 VAC 15-20-120.

18 VAC 15-20-452 is a new section created to continue the requirement to maintain certain training and license records on asbestos abatement sites that was repealed as 18 VAC 15-20-130.

18 VAC 15-20-453 is a new section created to continue the conflict of interest provisions that were repealed as 18 VAC 15-20-140.

18 VAC 15-20-454 is a new section created to continue the prohibition against contractor license transfers that was repealed as 18 VAC 15-20-160.

18 VAC 15-20-455 is a new section created to establish the duties and functions of project monitors and contains the substance of repealed 18 VAC 15-20-300.

18 VAC 15-20-456 is a new section created to establish the responsibilities of project monitors and is a new standard, except for subsection D, which is drawn from the first sentence of subsection F of 18 VAC 15-20-330.

18 VAC 15-20-457 is a new section created to establish the duties and functions of project designers and contains the language of repealed 18 VAC 15-20-280.

18 VAC 15-20-458 is a new section created to establish the responsibilities of project designers and is a new requirement proposed by the Board to document, in writing, the project designs describing abatement work to be undertaken by a contractor.

18 VAC 15-20-459 is a new section created to establish the duties and functions of inspectors and management planners. Subsection A is new and simply sets out the objective of asbestos inspections, which is essentially to find suspect materials and determine if they contain asbestos. Subsection B is drawn from repealed 18 VAC 15-20-260 and has been rephrased to emphasize the objective of managing remaining asbestos containing materials in a building.

18 VAC 15-20-459.1 is a new section created to establish the responsibilities of inspectors and management planners. Subsections A and B are new and require that inspections be conducted in compliance with the Asbestos Hazard Emergency Response Act (AHERA) and provide minimum standards for inspection reports.

18 VAC 15-20-459.2 establishes general standards of practice and conduct for asbestos analytical laboratories and is a new section. It is drawn from repealed 18 VAC 15-20-340.

18 VAC 15-20-459.3 is a new section created to establish laboratory responsibilities for the analysis they perform. Some of its substance was drawn from 18 VAC 15-20-360.

18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 are new sections created to establish change of status and license certificate standards for laboratories. They have been drawn from repealed 18 VAC 15-20-380 and 18 VAC 15-20-390, respectively.

18 VAC 15-20-459.6 establishes the approval standards for accredited asbestos training programs and is the same as repealed 18 VAC 15-20-620, except for subdivision 7 of subsection A. Subdivision 7 has been changed to require a copy of the course examination and answer sheet rather than a detailed statement of how the examination was developed.

18 VAC 15-20-459.7 establishes the approval process used by the Department to process and approve training program applications. This new provision articulates the procedure that has been in use by the Department for many years.

18 VAC 15-20-459.8 establishes the examination requirement to be met by all training programs and is drawn, with minor language changes, from deleted 18 VAC 15-20-630.

18 VAC 15-20-459.9 describes how training programs are to handle letters of approval, and how records are to be maintained and made available to the Board or its representatives. The language is drawn, with minor changes, from repealed 18 VAC 15-20-650.

18 VAC 15-20-459.10 establishes standards for refresher training programs approval and is drawn, with minor changes, from repealed 18 VAC 15-20-650.

18 VAC 15-20-459.11 establishes a new renewal requirement for accredited asbestos training programs. The absence of a renewal requirement has created problems for the public and the Department. Renewal will allow the Department to track and regulate those programs continuing in operation.

18 VAC 15-20-459.12 establishes the procedure to be followed by training programs to have changes made to their approved programs and is drawn from repealed 18 VAC 15-20-660.

18 VAC 15-20-459.13 establishes the requirements to have a training program approval transferred and is drawn from repealed 18 VAC 15-20-670.

18 VAC 15-20-459.14 establishes the authority of the Department to obtain access to training activities for the purpose of assuring compliance and is drawn from repealed 18 VAC 15-20-680.

18 VAC 15-20-459.15 establishes the grounds for suspension or revocation of a training program's approval and is drawn from 18 VAC 15-20-690.

18 VAC 15-20-460 establishes general record keeping requirements for those approved to perform asbestos training. Language concerning certain obsolete or superceded federal provisions was deleted.

18 VAC 15-20-470 establishes specific record keeping requirements for approved training programs. The requirement to submit a course participant list at the end of each course has been deleted. Many participants do not apply to the Department for licensure. The lists were filed and rarely used.

18 VAC 15-20-480 establishes the course outline and syllabus standards for training programs and is substantially unchanged.

18 VAC 15-20-490 establishes the standards for certificates of course completion that shall be prepared and presented by the training program to each individual passing each course. The standards are substantially unchanged.

18 VAC 15-20-500 establishes the standards for course material and equipment to be used during training programs. The language describing the equipment list and how superseded equipment lists are to be maintained has been amended for clarity.

18 VAC 15-20-510 establishes the standards for approval of instructors, has been repealed in its entirety, revised substantially and now appears as 18 VAC 15-20-511.

18 VAC 15-20-511 is a new section and establishes the qualifications for asbestos training program instructors. It continues the substance of repealed 18 VAC 15-20-510.

18 VAC 15-20-520 establishes the standard for the number of instructors to be used in training programs and is unchanged except for a minor phrasing change.

18 VAC 15-20-530 establishes student to instructor ratios for training programs and remains unchanged except for language revisions that add to clarity.

18 VAC 15-20-540 requires that all initial and refresher training programs be discipline specific. The language remains unchanged.

18 VAC 15-20-550 requires each training program to be completed within two weeks and has been amended for clarity.

18 VAC 15-20-560 limits the amount of training that an individual may receive in a single day. The section has been amended to allow more than four hours of training during the evening if it is conducted during the student's second or third shift.

18 VAC 15-20-570 requires all programs to be taught in English, with the single exception of asbestos worker programs. There is no change from current requirements except for minor language changes.

18 VAC 15-20-580 continues the standards for examinations used to test comprehension and learning at the end of each training program. There are some minor language revisions, but no change in substance.

18 VAC 15-20-590 continues a requirement to notify the Board of any change in address, telephone number or instructors within 30 days. There is no change from current requirements.

18 VAC 15-20-600 continues a requirement for training providers to notify the Board if they cease training and give the Board the opportunity to take possession of their training records. There are only minor changes in phrasing.

18 VAC 15-20-610 requires training programs comply with EPA ASHARA and the EPA Model Accreditation Plan. There is no change from the current requirement.

18 VAC 15-20-620 through 18 VAC 15-20-680 have been repealed in their entirety and now appear as 18 VAC 15-20-459.6 through 18 VAC 15-20-459.15.

18 VAC 15-20-700 through 18 VAC 15-20-880 set the standards for asbestos training programs and contain only minor amendments.

18 VAC 15-20-890 through 18 VAC 15-20-950 concern roofing, flooring and siding (RFS) training and are repealed in their entirety to implement House Bill 951, passed by the 1996 Session of the Virginia General Assembly.

18 VAC 15-20-960 enumerates the current fee structure, is redundant to 18 VAC 15-20-50 and has been repealed in its entirety.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Asbestos is a known carcinogen which kills thousands of people every year. Both federal and state regulation are necessary to protect the public and the asbestos workforce.

The primary advantage to the public of implementing the new regulatory provision is the continued protection to the public resulting from the availability of competent and trained personnel to work in the hazardous field of asbestos abatement. The primary advantage to the Commonwealth is to be able to regulate the workforce necessary to meet both federal and state asbestos regulations. The disadvantages to the public and the Commonwealth are the costs related to asbestos abatement and the administration of the regulatory program.

Given that one asbestos fiber in the human lung can cause mesothelioma, a cancer that results in death, and that much of the asbestos work is done in public schools, the advantages far outweigh the disadvantages.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Item 8 Analysis

Board for Asbestos and Lead Virginia Asbestos Licensing Program Fiscal Impact of Proposed Regulation

Summary:

The proposed regulation will revise definitions, delete the roofing, flooring and siding provisions (which were abolished by House Bill 951, effective July 1, 1996), clarify fees for initial approval of accredited asbestos training programs, and create a biennial renewal requirement and fee for accredited asbestos training programs. Project monitors who also hold a valid supervisor or project designer license may renew their project monitor license by completing the supervisor or project designer refresher training. Language has been added to make clear that a refresher training certificate may be used but once to renew a license. The entry standards for inspectors, management planners and project designers have been changed to allow applicants to present evidence of minimal competence. Project monitors will be required on projects involving more than 260 linear feet or 160 square feet of asbestos containing materials. An additional option to qualify for an asbestos and analytical laboratory license has been added and performance standards for laboratory operation have been added.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees.

All Boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of indirect costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Fiscal Impact:

	FY 2001	FY 2002	FY2003	FY2004
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0

Description of Costs: The printing of regulations and the system changes needed from Information Systems are normal operating board costs.

Cost to Localities: None.

Description of Regulants: All asbestos individual licenses will be subject to renewal requirements that hold true to their Virginia training only. Approximately 60 asbestos analytical laboratories will be effected by the new option of registration in the Asbestos Analyst Registry. Approximately 80 asbestos training providers will be affected by requiring a fee be paid for renewal every two years. The intent to able to track asbestos training programs. As such, the biennial renewal will be \$50 per asbestos training provider, or an additional \$4,000 biannually in revenues to the program.

All existing providers will be accepted as accredited training providers, but both new and existing providers will need to have every newly offered training course evaluated. The fee would range from \$400 for an eight hour refresher course to \$2,000 for an Asbestos Project Monitor 40 hour Training Course. The rate of \$50 per hour is consistent with what is currently being charged for the Lead-Based Paint program. Although it is difficult to predict what the actual activity will be here, ten \$800 units per year has been estimated by board staff and would add another \$8,000 to the biennial revenue total.

Estimated Number of Regulants: Approximately 4,318 Individuals and 319 Firms will be impacted by this change.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The word "Department" has been changed to "Board" throughout the proposed regulation, where applicable, at the suggestion of the Attorney General's Office.

18 VAC 15-20-10 has been amended to add the meanings of acronyms used throughout the regulation document.

18 VAC 15-20-20 has been amended to add, delete or modify the definitions of terms used throughout the regulation document.

The definition of "AAR" has been added to clarify that "AAR" means Asbestos Analyst Registry, which is one of the organizations which sets standards for field phase contrast microscopy.

The definition of "AAT" has been added to clarify that " AAT" means Asbestos Analyst Testing which is one of the testing organizations that certifies field phase contrast microscopy.

The definition of "accredited asbestos training program" has been added to differentiate the program of training from an organization, which provides training (accredited asbestos training provider).

The definition of "accredited asbestos training provider" has been added to differentiate between a training provider and a training program.

The definition of "AIHA" has been added to mean American Industrial Hygiene Association, which is one of the testing organizations that certifies field phase contrast microscopy.

The definition of "approval letter" has been added to more clearly describe the instrument issued to training providers as evidence of approval.

The definition of "asbestos" has been added to mean the mineral definition of asbestos, which is more specific and scientifically correct.

The definition of "asbestos contractor" has been added to make clear that it applies to those who have been issued an asbestos contractor's license by the board and are authorized by law to enter into contracts to perform asbestos projects.

The definition of "demolition" has been deleted as it is not used.

The definition of "environmental remediation activity" has been added to specify those activities planned or carried out for the purpose of reducing or eliminating any environmental hazard addressed in the proposed regulation. It makes clear that training is included as well as actual abatement.

The definition of "EPA" has been added to mean the United States Environmental Protection Agency. This term is used throughout the regulations and will eliminate any possible confusion.

The definition of "inspection" has been added to specify those activities encompassed by the use of the term throughout the proposed regulation.

The definition of "instructor" has been added to mean a person who instructs one or more accredited asbestos training programs, to include the principal instructor, but excluding guest instructors.

The definition of "local education agency" or "LEA" has been repealed since the "LEA" is no longer used in the document.

The definition of "officer" has been deleted since "officer" is no longer used in the document.

The definition of "PAT" has been added to clarify that "PAT" means Proficiency Analytical Testing which is one of the testing organizations that accreditates laboratories to analyze air samples for asbestos by phase contrast microscopy.

The term "primary instructor" has been changed to "principal instructor" to be consistent with the Lead-Based Activities Regulation. The phrasing has been revised to replace "courses" with "accredited asbestos training programs," reflecting the term created to refer to the course of study provided by "accredited asbestos training providers."

The definition of "RFS contractor's license" has been deleted to implement House Bill 951(1996), which deregulated roofing, flooring and siding.

The definition of "RFS inspector" has been deleted to implement House Bill 951(1996), which deregulated roofing, flooring and siding.

The definition of "RFS inspector's license" has been deleted to implement House Bill 951(1996), which deregulated roofing, flooring and siding.

The definition of "response action" has been changed to reflect the current EPA definition.

The definition of "site" has been deleted since "site" is no longer used in the document.

The definition of "small-scale, short-duration" has been added to reflect the current EPA definition.

The definition of "structure" has been deleted since "structure" is no longer used in the document.

The definition of "USEPA" has been deleted and replaced with the term "EPA" (addressed above), which is a more recognizable term.

18 VAC 15-20-21 has been added to make clear that the Board may waive regulation requirements only when no harm to the public will result and to explain that the burden of proof which demonstrates continued public protection rests with the party requesting the waiver.

18 VAC 15-20-30 has been revised for clarity and ease of use. Much of the revisions reflect the relocation of language or requirements from other sections of the existing regulations. The result

is a section that allows one to quickly determine the general requirements to obtain and renew licensure.

Subsection A has been amended to delete the Department's mailing address, which is subject to change, appears on the printed regulation booklet and is available from the Department's web site (www.state.va.us/dpor). The instructions are simplified to require applications to be made on a form provided by the Department. There is no economic impact.

Subsection B has been added to require all applicants to be 18 years old before becoming eligible for licensure in any of the disciplines. This requirement was moved from the sections dealing with each individual discipline. There is no economic impact

Subsection C (formerly subsection B) has been amended to specify the nature of the training required for all individual license disciplines except worker, which is covered in subsection D. In addition, the Board revised the language to reflect the EPA regulation requirement. Virginia's current regulation allows as much as 24 months after the date of the initial training for an individual to complete the refresher training before being required to again complete the initial training. EPA only allows 12 months. Virginia's refresher training requirement is based on the date of license issuance while the EPA refresher requirement is based on the date of training completion. EPA accreditation is required for any asbestos abatement project under federal jurisdiction, such as those on military bases and federal buildings. A Virginia license is required for all other work in Virginia. This has created confusion among the regulated population who must track EPA accreditation separately from Virginia licensure. The current regulation does not implement the requirement of EPA regulations and may, in the future, place Virginia's EPA accreditation in jeopardy. The Board's amended language reflects the EPA regulation requirement. There may be some economic impact on licensees who do not need EPA accreditation and have taken advantage of the additional time allowed by the Virginia regulations to complete the refresher course.

Subsection D serves the same function for workers as subsection C serves for the other individual disciplines. Workers are allowed to qualify for a license by completing the supervision discipline training rather than the worker discipline training, if they desire. The rationale and economic impact are the same.

Subsections E, F and G require submission of an application on forms provided by the Department to become licensed as an asbestos contractor, or as an asbestos analytical laboratory or for approval as an accredited asbestos training program. There is no economic impact.

Subsection H is the former subsection C with a clarifying amendment that results in no economic impact.

Subsection I is the former subsection D that has been amended to delete language redundant to 18 VAC 15-20-450. There is no economic impact.

Subsection J is the former subsection G that has been amended for clarity and to delete language redundant to 18 VAC 15-20-50 L.

18 VAC 15-20-40 has been amended to change the name of the form required to document qualifying experience and to allow a letter from an employer to be substituted for the experience verification form. This will lessen the burden for applicants who have difficulty getting the form completed or who may need to have experience verified by an individual no longer employed by the firm where the experience was obtained. There will be an economic benefit to applicants who encounter difficulty having the experience verification form completed by a former supervisor.

18 VAC 15-20-50 has been amended to delete references to the deregulated RFS disciplines and to enhance clarity. Several fees have been moved to this section from other sections in the current regulations. The fees reflected are those currently in effect except for the renewal fee for accredited asbestos training programs. The accredited asbestos training program renewal fee is new. Its rationale is addressed under 18 VAC 15-20-60, below. The economic impact is limited to the cost of the accredited asbestos training program renewal fee.

18 VAC 15-20-60 has been amended to provide more specific information concerning license renewal, to change the date that individual licensees must complete refresher training and to add a requirement for accredited asbestos training programs to be renewed.

Subsection A is new and amends the language in the former section to cause individual licenses to expire one year from the date that initial training or most recent refresher training was completed rather than the date the license was issued. The economic impact of this change was addressed under 18 VAC 15-20-30 C.

Subsection B is a new subsection made necessary by the change in the method used to expire and renew individual licenses. Contractor and analytical laboratory licenses continue to expire annually based on the date of initial license issuance. There is no change from the requirements of the current regulations and no economic impact.

Subsection C is a new subsection that creates a renewal requirement for accredited asbestos training programs. This requirement has been added to address the difficulty of determining who is currently an active training provider and to generate revenue to cover the costs of regulation. The current regulations require an initial application fee. As time passes, it becomes more and more difficult to determine which of the approved programs remain active and their current locations and telephone numbers. A list of approved programs is maintained and provided to those seeking training. Feedback from those individuals using the list to find training indicates they often encounter difficulty contacting those on the list. No mechanism exists under the current regulations to remove approved programs from the list.

18 VAC 15-20-70 has been amended to reflect the renewal requirement for accredited asbestos training programs, to provide an additional refresher training option for project monitors, and to

limit to one the number of times a single training certificate may be used to renew an individual license. Other revisions to the language have been made for clarity. None of these amendments have an economic impact other than that already addressed above.

18 VAC 15-20-80 has been amended to extend the requirement to report name and address changes to accredited asbestos training programs. There is no economic impact.

18 VAC 15-20-90 has been amended to move the general requirements to qualify for a worker license to 18 VAC 15-20-30. This is a part of a reorganization to place general entry requirements in one section (18 VAC 15-20-30) and discipline specific entry requirements in their own unique sections. The remaining language requires a completed application with fee and cites the general requirements in 18 VAC 15-20-30 and 18 VAC 15-20-50. There is no economic impact resulting from the amendments.

18 VAC 15-20-100 requires applications be accompanied by the appropriate fee and has been repealed in its entirety. The language now appears in 18 VAC 15-20-50. There is no economic impact.

18 VAC 15-20-101 is a new section containing the specific entry requirements for licensure as an asbestos supervisor. The general entry requirements are contained in 18-VAC 15-20-30. There is no economic impact.

18 VAC 15-20-110 has been amended to specifically require an application and fee, and to state more specifically which occupational or professional licenses are required to qualify for an asbestos contractor license. There is no economic impact.

18 VAC 15-20-120, 18 VAC 15-20-130 and 18 VAC 15-20-140 have been repealed in their entirety. The standards established in the repealed sections have been moved to 18 VAC 15-20-451, 18 VAC 15-20-452 and 18-15-20-453, respectively. There is no economic impact.

18 VAC 15-20-150 has been amended to empower the Board to deny the asbestos contractor license application of any firm whose owners, officers or directors have a financial interest in an asbestos contractor whose asbestos license has been revoked, suspended or denied renewal. This will give the Board control over individuals who attempt to avoid the impact of disciplinary action by creating another business entity and applying for licensure. There is no economic impact.

18 VAC 15-20-160 prohibits the transfer of an asbestos contractor license and has been repealed in its entirety. Its substance now appears as 18 VAC 15-20-454. There is no economic impact.

18 VAC 15-20-170, 18 VAC 15-20-180, 18 VAC 15-20-190, 18 VAC 15-20-200, 18 VAC 15-20-210, 18 VAC 15-20-220, 18 VAC 15-20-230 and 18 VAC 15-20-240 have been repealed in their entirety to implement the provisions of House Bill 951, passed by the 1996 Session of the Virginia General Assembly, which deregulated asbestos roofing, flooring and siding activities.

18 VAC 15-20-250 establishes the qualifications for inspections and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-251. Two provisions have been deleted. One refers to AHERA or Virginia accreditation as an inspector after December 17, 1987, which is obsolete. The other repeals the existing option for experience to be obtained by being in responsible charge of inspectors; experience that is unlikely to assure one develops the skills needed by asbestos inspectors. Language has been added to allow one to qualify for a license if he can show evidence of having completed a certain number of inspections. 18 VAC 15-20-251 specifies how the qualifying experience must be obtained. Individuals who have worked under inspectors and have completed a number of inspections can now qualify for a license. The economic impact of becoming licensed has been reduced for those who meet this criterion but do not meet the months of employment standard, which appears in the current regulation and is continued in the proposed regulation. Completing the specified number of inspections demonstrates a minimum competency and protects the public.

18 VAC 15-20-251 is a new section drawn from 18 VAC 15-20-250 as a part of the reorganization of the sections. The language amendments and impact are addressed above.

18 VAC 15-20-260 describes the management plan to be prepared by management planners, and has been repealed in its entirety. Its substance has been made a part of 18 VAC 15-20-459 and 18 VAC 15-20-459.1 dealing with standards of conduct and practice of management planners. There is no economic impact.

18 VAC 15-20-270 establishes entry standards for management planners and has been amended to reorganize the existing regulation provisions and to delete the references to qualifying experience that have been revised and included in 18 VAC 15-20-271. As with inspectors addressed under 18 VAC 15-20-250 above, obsolete and ineffective language has been deleted and language has been added to allow one to qualify for a license after having completed a specific number of management plans. The economic impact of becoming licensed has been reduced for those who meet this criterion but do not meet the months of employment standard, which appears in the current regulation and is continued in the proposed regulation. Completing the specified number of management plans demonstrates a minimum competency and protects the public.

18 VAC 15-20-271 is a new section drawn from 18 VAC 15-20-270 as a part of the reorganization of the sections. It continues the substance of language deleted from 18 VAC 15-20-270 by specifying how one may obtain qualifying experience to become a management planner. The reference to December 17, 1987 (mentioned above) is deleted as obsolete while allowing the substance of the qualifying experience to remain. There is no economic impact.

18 VAC 15-20-280 sets the duties and functions of project designers and has been repealed in its entirety. Its substance now appears in 18 VAC 15-20-457 under standards of practice and conduct for project designers. There is no economic impact.

18 VAC 15-20-290 establishes the entry standards for project designers, has been amended to reorganize the existing regulation provisions, and to delete the references to qualifying

experience that have been revised and included in 18 VAC 15-20-291. As with inspectors addressed under 18 VAC 15-20-250 above, obsolete and ineffective language has been deleted and language has been added to allow one to qualify for a license after having completed a specific number of project designs. The economic impact of becoming licensed has been reduced for those who meet this criterion but do not meet the months of employment standard, which appears in the current regulation and is continued in the proposed regulation. Completing the specified number of project designs demonstrates a minimum competency and protects the public.

18 VAC 15-20-291 is a new section drawn from 18 VAC 15-20-290 as a part of the reorganization of the sections. It continues the substance of language deleted from 18 VAC 15-20-290 by specifying how one may obtain qualifying experience to become a project designer. The reference to December 17, 1987 (mentioned above) is deleted as obsolete while allowing the substance of the qualifying experience to remain. There is no economic impact.

18 VAC 15-20-300 establishes the duties and functions of project monitors, has been repealed in its entirety and moved to 18 VAC 15-20-455 under a new regulation part created for project monitor standards of conduct and practice. The last sentence contains a conduct standard that applies to all licensees, is already contained in 18 VAC 15-20-400 and, for this reason, has been deleted. This is a part of the reorganization of the regulation document. There is no economic impact.

18 VAC 15-20-310 specifies the types of abatement projects that must have a project monitor. The section has been repealed in its entirety. The regulation required project monitors on specific projects but stopped short of making any specific party responsible to assure the presence of project monitors. As a result, the regulation is unenforceable. The Board considered making asbestos contractors responsible for assuring the presence of project monitors and rejected this idea because of the clear conflict of interest that would result. The Board also considered making the property owner responsible and determined that it lacked the statutory authority to set standards for building owners. There is no economic impact.

18 VAC 15-20-320 exempts residential buildings from the project monitor requirements and has been repealed in its entirety for substantially the same reasons as cited above for 18 VAC 15-20-310. There is no economic impact.

18 VAC 15-20-330 establishes the license qualifications for project monitors and has been revised and reorganized for clarity. The language establishing qualifying experience in subsection E has been rephrased and moved to subsection B. Subsections C and D have been rephrased, deleted in their entirety and moved to subsections A and B of 18 VAC 15-20-332, project monitor training requirements. The substance of the first sentence of subsection F has been moved to 18 VAC 15-20-456 D, [project monitor] responsibilities, and the substance of the remainder of the subsection have been revised and moved to 18 VAC 15-20-331, qualifying experience. The qualifying experience has been changed to focus on lawfully gained experience either in another jurisdiction or under the responsible supervision of a licensed project monitor. There is no economic impact.

18 VAC 15-20-331 and 18 VAC 15-20-332 are new sections and have been addressed under 18 VAC 15-20-330 above. There is no economic impact.

18 VAC 15-20-340 establishes the general standards of performance for asbestos analytical laboratories, has been repealed and moved to 18 VAC 15-20-459.2 under Part XVII establishing standards of practice and conduct for asbestos analytical laboratories. There is no economic impact.

18 VAC 15-20-350 establishes the license application requirements for asbestos analytical laboratories and has been repealed in its entirety. The substance has been moved to 18 VAC 15-20-40 as a part of the regulation reorganization. There is no economic impact.

18 VAC 15-20-360 establishes the licensing qualifications for asbestos analytical laboratories and has been rephrased for clarity. The Board considered the alternative of allowing laboratories accredited by the American Industrial Hygiene Association (AIHA) to become licensed. That alternative was adopted and is reflected in the language. To the extent that AIHA accredited laboratories have desired to be licensed in the past, the economic impact of this requirement has been reduced. The Board has determined that AIHA accredited laboratories may perform asbestos analysis without creating a hazard to the public.

18 VAC 15-20-370 establishes the requirement to submit a completed application along with a fee in order to apply for an asbestos analytical laboratory license and is repealed in its entirety. The substance of this requirement has been moved to 18 VAC 15-20-40 as a part of the regulation reorganization mentioned earlier. There is no economic impact.

18 VAC 15-20-380 and 18 VAC 15-20-390 deal with laboratory change of status and license certificate, have been repealed in their entirety and their substance moved to 18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 as a part of the regulation reorganization. There is no economic impact.

18 VAC 15-20-400 establishes the responsibility of all licensees to the public and establishes performance standards in specific situations. There is no change from the existing regulation and no economic impact.

18 VAC 15-20-410 establishes performance standards for public statements made by regulants and is unchanged from the current regulation. There is no economic impact.

18 VAC 15-20-420 establishes solicitation of work standards for regulants and is unchanged from the current regulation. There is no economic impact.

18 VAC 15-20-430 establishes professional responsibility standards for regulants and is unchanged from the current regulation. There is no economic impact.

18 VAC 15-20-440 establishes a requirement for regulants to maintain good standing in other jurisdictions in which they may be regulated. There is no change from the current regulation and there is no economic impact.

18 VAC 15-20-450 enumerates the grounds for disciplinary action that may be taken by the Board against regulants who fail to comply with the provisions of the regulations. The language has been amended for clarity and is substantially unchanged from the current regulation. There is no economic impact.

18 VAC 15-20-451 is a new section created to continue the asbestos contractor responsibilities that were repealed as 18 VAC 15-20-120. The requirement of repealed 18 VAC 15-20-120 C that contractors designate a licensed supervisor to serve as his agent for the purpose of meeting the training requirements was not included in 18 VAC 15-20-451. The subsection was originally included to assure that a competent person was available to be assigned to abatement project sites. The requirement of 18 VAC 15-20-451 D (formerly 18 VAC 15-20-120 E) is sufficient to assure a competent person on site. There is no economic impact.

18 VAC 15-20-452 is a new section created to continue the requirement to maintain certain training and license records on asbestos abatement sites that was repealed as 18 VAC 15-20-130. There is no economic impact.

18 VAC 15-20-453 is a new section created to continue the conflict of interest provisions that were repealed as 18 VAC 15-20-140. There is no economic impact.

18 VAC 15-20-454 is a new section created to continue the prohibition against contractor license transfers that was repealed as 18 VAC 15-20-160. There is no economic impact.

18 VAC 15-20-455 is a new section created to establish the duties and functions of project monitors and contains the substance of repealed 18 VAC 15-20-300. This revision is a part of the reorganization of the regulation document. There is no economic impact.

18 VAC 15-20-456 is a new section created to establish the responsibilities of project monitors and is a new standard, except for Subsection D, which is drawn from first sentence of subsection F of 18 VAC 15-20-330. These new standards represent responsible practice and are the least restrictive alternative considered. The Board had concern that project monitors play a pivotal role in assuring compliance with proper practice requirements on job sites and that their responsibilities should be more specifically enumerated to assure the public protection. There is some economic impact for those project monitors who do not follow the newly prescribed practices, but this is estimated to be very small.

18 VAC 15-20-457 is a new section created to establish the duties and functions of project designers and contains the language of repealed 18 VAC 15-20-280. This revision is a part of the reorganization of the regulation document. There is no economic impact.

18 VAC 15-20-458 is a new section created to establish the responsibilities of project designers and is a new requirement proposed by the Board to document, in writing, the project designs describing abatement work to be undertaken by a contractor. The federal Asbestos Hazard Emergency Response Act (AHERA) requires written project designs. There is some economic impact for those project designers who do not follow similar practices currently, but this is estimated to be very small.

18 VAC 15-20-459 is a new section created to establish the duties and functions of inspectors and management planners. Subsection A is new and simply sets out the objective of asbestos inspections; essentially to find suspect materials and determine if they contain asbestos. Subsection B is drawn from repealed 18 VAC 15-20-260 and has been rephrased to emphasize the objective of managing remaining asbestos containing materials in a building. There is no economic impact. The details contained in the repealed language are addressed in 18 VAC 15-20-459.1 C, which requires management plans to be prepared in accordance with the federal Asbestos Hazard Emergency Response Act (AHERA).

18 VAC 15-20-459.1 is a new section created to establish the responsibilities of inspectors and management planners. Subsections A and B are new and require that inspections be conducted in compliance with the Asbestos Hazard Emergency Response Act (AHERA) and provide minimum standards for inspection reports. There is some economic impact for those inspectors who do not follow similar practices currently, but this is estimated to be very small. Subsection C concerns management planners and was discussed under 18 VAC 15-20-459 above. Again, there is some economic impact for those management planners who do not follow similar practices currently, but this is estimated to be very small.

18 VAC 15-20-459.2 establishes general standards of practice and conduct for asbestos analytical laboratories and is a new section. It is drawn from repealed 18 VAC 15-20-340 with no change in language. This is a part of the reorganization of the regulation document. There is no economic impact.

18 VAC 15-20-459.3 is a new section created to establish laboratory responsibilities for the analysis they perform. Some of its substance was drawn from 18 VAC 15-20-360, which established entry standards and specified the analysis those licensed were authorized to perform. The substance of those provisions has been grouped into this section as specific standards for completing each type of laboratory analysis. The standards cited are from federal standards and are the accepted standard in the industry. There is no economic impact.

18 VAC 15-20-459.4 and 18 VAC 15-20-459.5 are new sections created to establish change of status and license certificate standards for laboratories. They have been drawn from repealed 18 VAC 15-20-380 and 18 VAC 15-20-390, respectively. The requirement for laboratories to notify the Department of the receipt of certain proficiency evaluation results has been deleted in favor of the requirement that the Department be notified when a proficiency rating is lost. There is no benefit to the public from the notifications of continued approval or proficiency. There will be some reduction in economic impact on laboratories in the form of the time and expense necessary to prepare and send notices of compliance.

18 VAC 15-20-459.6 establishes the approval standards for accredited asbestos training programs and is the same as repealed 18 VAC 15-20-620, except for subdivision 7 of subsection A. Subdivision 7 has been changed to require a copy of the course examination and answer sheet rather than a detailed statement of how the examination was developed. Board attention can be focused on the quality of the examination itself rather than the procedure used to develop the examination, which is of little relevance to the effectiveness of the end product examination. Subsection B is a new requirement that requires an application to be submitted to the Department at least 45 days before the date of the requested audit. Applications often arrive just before the desired audit date and create an impossible situation for staff, especially when numerous applications are received in a short time frame. Those preparing to submit an application will now be aware of the time frames and can make their business plans accordingly. There may be some economic impact on those applicants who desire to be audited sooner. Given the small number of applications, the impact is estimated to be very small.

18 VAC 15-20-459.7 establishes the approval process used by the Department to process and approve training program applications. This new provision articulates the procedure that has been in use by the Department for many years and allows the potential applicant to know what to expect when his application is received. There is no economic impact.

18 VAC 15-20-459.8 establishes the examination requirement to be met by all training programs and is drawn, with minor language changes, from deleted 18 VAC 15-20-630. There is no economic impact.

18 VAC 15-20-459.9 describes how training programs are to handle letters of approval, and how records are to be maintained and made available to the Board or its representatives. The language is drawn, with minor changes, from repealed 18 VAC 15-20-650. There is no economic impact.

18 VAC 15-20-459.10 establishes standards for refresher training program approval and is drawn, with minor changes, from repealed 18 VAC 15-20-650. There is no economic impact.

18 VAC 15-20-459.11 establishes a new renewal requirement for accredited asbestos training programs. The absence of a renewal requirement has created difficulties for the Department and for those in the public desiring to be trained by accredited programs. Once approved under the current regulations, training programs remain approved forever, unless suspended or revoked for failure to comply. The list of approved training programs is often found to contain outdated information because there is no mechanism to periodically determine which programs are viable businesses that desire to continue operation. The fee associated with the renewal will offset the Department's costs to monitor the training programs for compliance. The economic impact will take the form of \$50 every two years and the effort to provide the three elements of information requested, which is estimated to be very small.

18 VAC 15-20-459.12 establishes the procedure to be followed by training programs to have changes made to their approved programs and is drawn from repealed 18 VAC 15-20-660. There is no economic impact.

18 VAC 15-20-459.13 establishes the requirements to have a training program approval transferred and is drawn from repealed 18 VAC 15-20-670. There is no economic impact.

18 VAC 15-20-459.14 establishes the authority of the Department to obtain access to training activities for the purpose of assuring compliance and is drawn from repealed 18 VAC 15-20-680. There is no economic impact.

18 VAC 15-20-459.15 establishes the grounds for suspension or revocation of a training program's approval and is drawn from 18 VAC 15-20-690. The language has been changed to delete the reference to notification of revocation or suspension by the Board and replaced with language specifying that all such decisions shall be made by the Board in full compliance with the Virginia Administrative Process Act. There is no economic impact.

18 VAC 15-20-460 establishes general record keeping requirements for those approved to perform asbestos training. Language concerning certain obsolete or superceded federal provisions was deleted. Failure to comply with applicable federal requirements is grounds for disciplinary action under 18 VAC 15-20-450 A 3. There is no economic impact.

18 VAC 15-20-470 establishes specific record keeping requirements for approved training programs and has been amended in two places. The requirement to submit a course participant list at the end of each course has been deleted. Many participants do not apply to the Department for licensure. The lists are filed and are rarely used. Therefore, the requirement has been deleted. The economic impact results in a small saving in time and effort to training programs. Programs will be required to notify the Department no less than 48 hours before conducting training. This, along with the renewal requirement mentioned above, will considerably aid the Department in monitoring training programs for continued compliance with the regulations. The economic impact is limited to the time and effort necessary to send a short e-mail, fax or letter to the Department two days before the beginning of the course.

18 VAC 15-20-480 establishes the course outline and syllabus standards for training programs and is substantially unchanged. There is no economic impact.

18 VAC 15-20-490 establishes the standards for certificates of course completion that must be prepared and presented by the training program to each individual passing each course. The standards are substantially unchanged and have no economic impact.

18 VAC 15-20-500 establishes the standards for material and equipment to be used during training programs. Provisions requiring prior approval and eligibility are deleted because they are addressed in an earlier section dealing with training program approval. The language describing the equipment list and how superceded equipment lists are to be maintained has been amended for clarity. There is no economic impact.

18 VAC 15-20-510 establishes the standards for approval of instructors, has been repealed in its entirety, revised substantially and now appears as 18 VAC 15-20-511. There is no economic impact.

18 VAC 15-20-511 is a new section and establishes the qualifications for asbestos training program instructors. It continues the substance of repealed 18 VAC 15-20-510 and adds specific minimum requirements for training managers and principal instructors. It also limits the use of guest instructors, for which there are no qualifications enumerated, to two hours of training per day. The former language concerning the use of guest instructors was so vague as to invite abuse, resulting in instruction by individuals who were less than minimally qualified. The economic impact is limited to those who use less than qualified instructors or who have been making use of guest instructors beyond two hours of instruction per day. The actual cost is expected to be very small.

18 VAC 15-20-520 establishes the standard for the number of instructors to be used in training programs and is unchanged except for a minor phrasing change. There is no economic impact.

18 VAC 15-20-530 establishes student to instructor ratios for training programs and remains unchanged except for language revisions that add to clarity. There is no economic impact.

18 VAC 15-20-540 requires that all initial and refresher training programs be discipline specific. There is no change and no economic impact.

18 VAC 15-20-550 requires each training program to be completed within two weeks and has been amended for clarity. There is no economic impact.

18 VAC 15-20-560 limits the amount of training that an individual may receive in a single day. The objective is to prevent employers from sending their employees to training immediately after finishing an eight hour shift, resulting in poor learning on the part of the student. The section has been amended to allow no more than four hours of training during the evening if it is conducted during the student's second or third shift. There is no economic impact.

18 VAC 15-20-570 requires all programs to be taught in English, with the single exception of asbestos worker programs. There is no change from the current requirement except for minor language changes. There is no economic impact.

18 VAC 15-20-580 continues the standards for examinations used to test comprehension and learning at the end of each training program. There are some minor language revisions, but no change in substance. There is no economic impact.

18 VAC 15-20-590 continues a requirement to notify the Board of any change in address, telephone number or instructors within 30 days. There is no economic impact.

18 VAC 15-20-600 continues a requirement for training providers to notify the Board if they cease training and give the Board the opportunity to take possession of their training records. There are only minor changes in phrasing and there is no economic impact.

18 VAC 15-20-610 requires training programs to comply with EPA ASHARA and the EPA Model Accreditation Plan. There is no change from the current regulation and there is no economic impact.

18 VAC 15-20-620 through 18 VAC 15-20-680 have been repealed in their entirety and now appear as 18 VAC 15-20-459.6 through 18 VAC 15-20.459.15. The substance of the change and the impact are addressed above.

18 VAC 15-20-700 through 18 VAC 880 set the standards for asbestos training programs and contain only minor amendments. There is no economic impact.

18 VAC 15-20-890 through 18 VAC 15-20-950 concern roofing, flooring and siding (RFS) training and are repealed in their entirety to implement House Bill 951, passed by the 1996 Session of the Virginia General Assembly.

18 VAC 15-20-960 enumerates the current fee structure, is redundant to 18 VAC 15-20-50 and has been repealed in its entirety. There is no economic impact.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Regulations governing asbestos professionals are intended to qualify persons to work in a profession which requires knowledge and hands-on experience. Training from an approved course is required as well as experience. Access to the profession requires proof of competence.

Some changes in the proposed regulation should allow easier access to apply to be an asbestos professional and less restrictive work practices.

First, project designers, inspectors, and management planners are going to be allowed to use a set number of project designs, inspections, and management plans to qualify as experience necessary for licensure. If one has a bachelor of science degree in a science or related field then one could use 5 examples of project designs or inspections or management plans. If one has an associates of science degree in a related field then one could use 10 examples of project designs or inspections or management plans. If one has a high school diploma then one could use 15 examples of project designs or inspections or management plans.

Second, on July 1, 1996 House Bill 951 deregulated Asbestos Roofing, Flooring and Siding (RFS) projects.

Third, for fixed phase contrast microscopy (PCM) labs, an accreditation option has been added. This being the Asbestos Analytical Register (AAR). National Voluntary Lab Accreditation Program (NVLAP) accreditation is still required for Polarized Light Microscopy (PLM) and Transmission Electron Microscopy (TEM).

In every case the Board considered whether there was an alternative less burdensome which was no more stringent than the Federal regulations, but which also was as protective as the Federal regulations.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

A Notice of Intended Regulatory Action (NOIRA) was published in the June 19, 2000 issue of the Virginia Register of Regulations to obtain public comment on the effectiveness of and the continued need for the Board's current retaliations. The public comment period expired on July 19, 2000.

The following is a staff-prepared summary of the comments and response:

Marshall Marcus, CIH

Companies performing roofing, siding or tile removals by chipping or other high shear rate procedures, such as grinding and sawing, can expose both their employees and occupants to high levels of airborne asbestos. Contractors and their employees doing such work should possess a minimum level of competence to deal with these exposures. This is OSHA Class II asbestos removal work. DPOR should continue to require licenses for persons performing such operations. The exception would be any of these materials which have been examined by polarized light microscopy (PLM) and verified by transmission electron microscopy (TEM) to be asbestos-free.

Agency Response: Non-friable roofing, flooring, and siding which becomes friable during the course of removal is still considered an "asbestos project" and requires full licensure by the Department of Professional and Occupational Regulation for contractors and individuals working in this trade.

Ken Fisher, PE, CIH

Proposed changes to the Asbestos Licensing Regulations and Lead-Based Paint Activities Regulations identified on the postcard mailing are well founded and will contribute to sensible regulation to control the risk of exposure to asbestos and lead-based paint.

Agency Response: The agency thanks Mr. Fisher for his support.

Leigh Gabe

Glad to see that these items are being deleted. Hope the bill goes through. Supports it.

Agency Response: The agency thanks Ms. Gabe for his support.

**Dennis Lang, President
Wood & Lang, Inc.
Roofing and Sheet Metal Contractors**

Approves of the “Implementation of House Bill Number 951 (1996 Session), to delete all references to roofing and siding (RFS) contractors, inspectors and training providers.”

Agency Response: The agency thanks Mr. Lang for his support.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The experiences of the Department of Professional and Occupational Regulation staff, the Board members, and the public expressed through their comments have been considered during the regulation development process and have resulted in a more easily understandable document. Both the Board members and the Department of Professional and Occupational Regulation staff have made considerable effort to identify unnecessarily complicated language.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Board for Asbestos and Lead will enter into regulatory review two years following the date the final regulations are effective. The review will be conducted to determine if the regulations should be continued, amended, or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

It should also be noted that Section 54.1-113 of the Code of Virginia mandates regulatory boards to examine its fee structure at the end of the biennium. It's the Department's custom to encourage its affiliated boards to examine its regulations as described above at the same time the fee structure is examined for compliance.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on families in Virginia has been identified as resulting from the proposed regulations.